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5 FACSIMILE: (619) 232-4840

6 Attorneys for HARRAH'S ENTERTAINMENT, INC.; HARRAH'S OPERATING COMPANY,
INC.; HARRAH'S MARKETING SERVICES CORPORATION; HARRAH'S LAUGHLIN,
7 INC.; HARRAH'S LICENSE COMPANY, LLC; and HBR REALTY COMPANY, INC.

8

9
10 UNITED STATES DISTRICT COURT
11
12 SOUTHERN DISTRICT OF CALIFORNIA

13 JAMES M. KINDER,

14 Plaintiff,

vs.

15 HARRAH'S ENTERTAINMENT, INC.;
16 HARRAH'S OPERATING COMPANY, INC.;
17 HARRAH'S MARKETING SERVICES
CORPORATION; HARRAH'S LICENSE
COMPANY, LLC; HARRAH'S LAUGHLIN,
18 INC.; HBR REALTY COMPANY, INC. and
DOES 1 through 100, inclusive,

19 Defendants.

CASE NO. 07-CV-2132-DMS (AJB)
[Consolidated with 07 CV 2226 DMS (POR)]

Judge: Hon. Dana M. Sabraw
Mag. Judge: Hon. Anthony J. Battaglia

DECLARATION OF RONALD R. GIUSSO
IN SUPPORT OF MOTION BY
DEFENDANTS TO REMAND ACTION TO
STATE COURT DUE TO LACK OF
DIVERSITY JURISDICTION

ACCOMPANYING DOCUMENTS:
NOTICE OF MOTION AND MOTION;
MEMORANDUM OF POINTS AND
AUTHORITIES; REQUEST FOR JUDICIAL
NOTICE

Date: June 13, 2008
Time: 1:30 p.m.
Courtroom: 12

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1 I, Ronald R. Giusso, declare:

2
3 1. I am an attorney duly admitted to practice before this Court. I am an attorney with
4 Shea Stokes Roberts & Wagner, ALC, attorneys of record for Defendant Harrah's Entertainment,
5 Inc. If called as a witness, I could and would competently testify to all of the below facts which
6 are within my personal knowledge, except where stated upon information and belief.

7
8 2. This declaration is submitted in support of the motion by Defendants to Remand
9 This Action to State Court Based on Lack of Diversity Jurisdiction.

10
11 3. I attempted to meet and confer with Attorney Austin prior to filing the instant
12 motion to remand, to obtain a stipulation to remand. Although Attorney Austin did not dispute
13 that the total number of telephone calls at issue was only 7, he maintained that the possibility of
14 punitive damages might put the amount in controversy over \$75,000. He would not stipulate to
15 remand this action.

16
17 4. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiff's Summons and
18 Complaint, filed October 2, 2007.

19
20 5. Attached hereto as Exhibit 2 is a true and correct copy of Plaintiff's First Amended
21 Complaint for Damages, filed January 30, 2008.

22
23 6. Attached hereto as Exhibit 3 is a true and correct copy of the Declaration of Chad
24 Austin in Support of Plaintiff's Opposition to Defendants' Motion to Dismiss, filed April 11, 2008.

25 ///

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1 7. Attached hereto as Exhibit 4 is a true and correct copy of the second Declaration of
2 Chad Austin in Support of Plaintiff's Opposition to Defendants' Motion to Dismiss, filed April 11,
3 2008.

5 I declare under penalty of perjury that the foregoing is true and correct, and that this
6 declaration was executed by me on May 13, 2008 at San Diego, California.

s/Ronald R. Giusso

Ronald R. Giusso

EXHIBIT 1

**SUM. DNS
(CITACION JUDICIAL)**

SUM-100**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

Harrah's Entertainment, Inc. and DOES 1 through 100, inclusive.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
CIVIL CLERK'S OFFICE 19
CENTRAL DIVISION

07 OCT -2 PM 4:32

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

James M. Kinder

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):
San Diego Superior Court
330 W. Broadway
San Diego, CA 92101
Central Division

CASE NUMBER: (Número del Caso):	37-2007-00076114-CU-MC-CTL
------------------------------------	----------------------------

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Chad Austin, Esq.
3129 India St.
San Diego, CA 92103-6014
SBN 235457

619-297-8888 F 619-295-1401

DATE: OCT 02 2007
(Fecha)

Clerk, by C. Bentley, Deputy
(Secretario) C. Bentley, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.

2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under: CCP 416.10 (corporation)

CCP 416.60 (minor)

CCP 416.20 (defunct corporation)

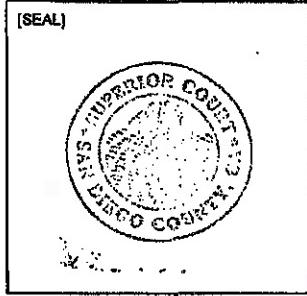
CCP 416.70 (conservatee)

CCP 416.40 (association or partnership)

CCP 416.90 (authorized person)

other (specify):

4. by personal delivery on (date):



1 Chad Austin, Esq. SBN 235457
2 3129 India Street
3 San Diego, CA 92103-6014
Telephone: (619) 297-8888
Facsimile: (619) 295-1401

FILED
CIVIL DIVISION
CLERK'S OFFICE 19
SUPERIOR COURT

4 Attorney for Plaintiff JAMES M. KINDER, an individual

07 OCT -2 PM 4:32
CLERK, SUPERIOR COURT
SAN DIEGO COUNTY, CA

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7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

10

11 JAMES M. KINDER,

) CASE NO. 37-2007-00076114-CU-MC-CTL

12 Plaintiff,

) COMPLAINT FOR DAMAGES,
INCLUDE PUNITIVE DAMAGES,
INTEREST AND ATTORNEY'S FEES,
AND FOR INJUNCTIVE RELIEF

13 v.

14 HARRAH'S ENTERTAINMENT, Inc. and
15 DOES 1 through 100, inclusive,

) Violations of Telephone Consumer
Protection Act of 1991
Violations of California Civil Code § 1770
(a) (22) (A)
Trespass to Chattel
Unfair Business Practices

16 Defendants.

17
18 COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges as
follows:

21

GENERAL ALLEGATIONS

22 1. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
Diego, State of California.

24 2. Defendant HARRAH'S ENTERTAINMENT, Inc. (hereinafter referred to as
"Defendant") was at all times herein mentioned a Delaware corporation, doing business in the
25 County of San Diego, State of California.

27 3. Plaintiff is unaware of the true names and capacities of defendants sued herein as
28 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.

1 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
2 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants
3 is responsible in some manner for the occurrences herein alleged and that Plaintiff's damages as
4 herein alleged were proximately caused by their conduct.

5 4. At all times herein mentioned each defendant was the partner, agent and employee
6 of each co-defendant herein and was at all times acting within the scope of such partnership, agency
7 and employment and each defendant ratified the conduct of each co-defendant herein.

FIRST CAUSE OF ACTION
[Violation of Telephone Consumer Protection Act of 1991]

1 5. Plaintiff realleges paragraphs 1 through 4 above and incorporates them herein by
2 reference.

13 6. Plaintiff is bringing this action pursuant to the provisions of the Telephone
14 Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – “TCPA”).

15 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States
16 Code makes it unlawful for any person to "Make any call (other than a call made for emergency

15 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States
16 Code makes it unlawful for any person to "Make any call (other than a call made for emergency

15 7. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States
16 Code makes it unlawful for any person to "Make any call (other than a call made for emergency

17 purposes or made with the prior express consent of the called party) using any automatic
18 telephone dialing system or an artificial or prerecorded voice...to any telephone number assigned
19 to a paging service, specialized mobile radio service, or other radio common carrier service, or
20 any service for which the called party is charged for the call.”

21 8. Defendants have been calling Plaintiff's number assigned to a paging service, using
22 an artificial or prerecorded voice, without Plaintiff's express permission. These calls were not made
23 for any emergency purpose, nor were these calls exempt under subdivision (c) of section 64.1200
24 of title 47 of the Code of Federal Regulations.

25 9. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a
26 private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii). Plaintiff
27 may obtain relief in the form of injunctive relief, or Plaintiff may recover \$500.00 for each
28 violation, or both. If the court finds that defendants' violations were willful or knowing, it may,

1 in its discretion, award up to three times that amount.

2

3 **SECOND CAUSE OF ACTION**

4 [Violation(s) of California Civil Code § 1770 (a) (22) (A)]

5 10. Plaintiff realleges paragraphs 1 through 9 above and incorporates them herein by
6 reference.

7 11. California Civil Code § 1770 (a) (22) (A) requires that all recorded messages
8 disseminated within the state be introduced by a live, natural voice giving the name of the entity
9 calling, the name of the entity being represented, an address or phone number for that entity, and
10 asking permission to play the recording. Defendant's illegal prerecorded telemarketing calls to
11 Plaintiff failed to comply with this requirement.

12 12. As a proximate result of defendants' violation of Civil Code section 1770,
13 plaintiff has suffered and continues to suffer damages in an amount not yet ascertained, to be
14 proven at trial.

15 13. Civil Code section 1780 (a) (2) provides for an injunction against future conduct
16 in violation of Civil Code section 1770.

17 14. Civil Code section 1780 (a) (4) provides for an award of punitive damages for
18 violations of Civil Code section 1770.

19 15. Civil Code section 1780 (d) provides for an award of attorneys fees for plaintiffs
20 harmed by California Civil Code §1770 (a) (22) (A) violations.

21 **THIRD CAUSE OF ACTION**

22 [Trespass to Chattel]

23 16. Plaintiff realleges paragraphs 1 through 15 above and incorporates them herein by
24 reference.

25 17. The conduct by defendants complained of herein, namely calling Plaintiff's
26 number assigned to a paging service, using an artificial or prerecorded voice, without Plaintiff's
27 express permission, constitutes an electronic trespass to chattel.

28 18. At no time did Plaintiff consent to this trespass.

1 19. As a proximate result of these intrusions, Plaintiff suffered damage in an amount
2 according to proof.

3 20. In making the illegal calls described above, defendants were guilty of
4 oppression and malice, in that defendants made said calls with the intent to vex, injure, or
5 annoy Plaintiff or with a willful and conscious disregard of Plaintiff's rights. Plaintiff therefore
6 seeks an award of punitive damages.

FOURTH CAUSE OF ACTION
[Engaging in Unfair Business Practices]

10 21. Plaintiff realleges paragraphs 1 through 20 above and incorporates them herein by
11 reference. .

12 22. Because these telephone calls violate federal statutes, they are unlawful business
13 practices within the meaning of section 17200 of the Business and Professions Code.

14 23. Section 17203 of the Business and Professions Code entitles Plaintiff to an
15 injunction enjoining defendants from engaging in unfair or unlawful business practices.

16 WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as
17 follows:

18 | On the FIRST CAUSE OF ACTION:

- 19 1. For an award of \$500.00 for each violation of 47 U.S.C. §227;
20 2. For an award of \$1,500.00 for each such violation found to have been willful;

21 | On the SECOND CAUSE OF ACTION:

- 22 3. For compensatory damages according to proof;

23 4. For preliminary and permanent injunctions, enjoining Defendants, and each of

24 them, from engaging in activity in violation of California Civil Code §1770 (a)

25 (22) (A);

26 5. For punitive damages;

27 6. For attorneys fees;

28 || //

1 On the THIRD CAUSE OF ACTION:

- 2 7. For compensatory damages according to proof;
3 8. For punitive damages;

4 On the FOURTH CAUSE OF ACTION:

- 5 9. For preliminary and permanent injunctions, enjoining Defendants, and each of
6 them, from engaging in unfair or unlawful business practices pursuant to section
7 17203 of the Business and Professions Code;

8 On ALL CAUSES OF ACTION:

- 9 10. For attorney's fees pursuant to California Code of Civil Procedure § 1021.5.
10 11. For costs of suit herein incurred; and
11 12. For such further relief as the Court deems proper.

12 Dated: October 2, 2007

13
14 By: 
15 CHAD AUSTIN, Esq.
16 Attorney for Plaintiff JAMES M.
17 KINDER
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EXHIBIT 2

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Chad Austin, Esq. SBN 235457
3129 India Street
San Diego, California 92109
Telephone: (619) 297-8888
Facsimile: (619) 295-1401

Attorney for Plaintiff, JAMES M. KINDER

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

COMES NOW Plaintiff JAMES M. KINDER (hereinafter referred to as "Plaintiff") who alleges as follows:

JURISDICTION AND VENUE

1. Although Plaintiff commenced this action in the San Diego Superior Court on October 2, 2007, Defendant HARRAH'S ENTERTAINMENT, Inc. removed to this court on November 21, 2007, pursuant to 28 U.S.C. §§ 1332 and 1441 (b). Plaintiff reserves the right to file a Motion for Remand at a later date. Each of the Defendants named herein is a resident of a state other than California and was responsible for disseminating unlawful prerecorded

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1 telemarketing calls to Plaintiff, a resident of the State of California. The amount in controversy
2 in this action exceeds \$75,000. San Diego is the proper venue for this action in that the torts
3 complained of herein occurred in the City of San Diego, County of San Diego, State of
4 California and Plaintiff is a resident of the City of San Diego, County of San Diego, State of
5 California.

6 **PARTIES**

7 2. Plaintiff is, and at all times herein mentioned was, a resident of the County of San
8 Diego, State of California.

9
10 3. Defendants, and each of them, are, and at all times herein mentioned were,
11 business organizations doing business in the form of unlawful telemarketing in the County of
12 San Diego, State of California to San Diego residents, including Plaintiff.

13
14 4. One of the 7 unlawful prerecorded telemarketing calls made to Plaintiff's number
15 assigned to a paging service, which was made on December 9, 2003 at 10:19 a.m., stated that it
16 was made on behalf of "Harrah's Rincon Casino." That casino is located in Valley Center, San
17 Diego County, California. On information and belief, Plaintiff alleges that the Harrah's Rincon
18 Casino is owned by the Rincon band of Mission Indians and operated by one or more of several
19 Harrah's entities, including but not necessarily limited to Defendant HARRAH'S
20 ENTERTAINMENT, Inc. (a Delaware corporation), Defendant HARRAH'S OPERATING
21 COMPANY, Inc. (a Delaware corporation), Defendant HARRAH'S MARKETING SERVICES
22 CORPORATION (a Nevada corporation) and Defendant HARRAH'S LICENSE COMPANY,
23 LLC (a Nevada limited liability company).

24
25 5. Defendant HARRAH'S LAUGHLIN, Inc. (a Nevada corporation) owns
26 "Harrah's Laughlin Casino." Two (2) of the unlawful prerecorded telemarketing calls
27 complained of in this action were calls to Plaintiff's number assigned to a paging service
28 promoting the Harrah's Laughlin Casino in Laughlin, Nevada.

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1 6. Defendant HARRAH'S OPERATING COMPANY, Inc. owns "Harrah's Las
2 Vegas Casino." Two (2) of the unlawful prerecorded telemarketing calls complained of in this
3 action were calls to Plaintiff's number assigned to a paging service promoting the Harrah's Las
4 Vegas Casino in Las Vegas, Nevada.

5

6

7 7. Defendant HBR REALTY COMPANY, Inc. (a Nevada corporation) owns
8 "Harrah's Council Bluffs Casino." One (1) of the unlawful prerecorded telemarketing calls
9 complained of in this action was a call to Plaintiff's number assigned to a paging service
10 promoting the Harrah's Council Bluffs Casino in Council Bluffs, Iowa.

11

12

13 8. One (1) of the unlawful prerecorded telemarketing calls complained of in this
14 action was a call promoting the Harrah's Metropolis Casino in Metropolis, Illinois. Plaintiff
15 alleges on information and belief that Defendant HBR REALTY COMPANY, Inc. owns the
16 Harrah's Metropolis Casino.

17

18

19 9. On information and belief, Plaintiff alleges that Defendant HARRAH'S
20 LICENSE COMPANY, LLC is responsible in some manner for all or at least some of the
21 unlawful prerecorded telemarketing calls complained of in this action.

22

23

24 10. Plaintiff is unaware of the true names and capacities of defendants sued herein as
25 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
26 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
27 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
28

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1 defendants is responsible in some manner for the occurrences herein alleged and that Plaintiffs
2 damages as herein alleged were proximately caused by their conduct.

3
4 11. At all times herein mentioned each defendant was the partner, agent and
5 employee of each co-defendant herein and was at all times acting within the scope of such
6 partnership, agency and employment and each defendant ratified the conduct of each co-
7 defendant herein.

8
9 **FIRST CAUSE OF ACTION**

[Violation of Telephone Consumer Protection Act of 1991]

10
11 12. Plaintiff realleges paragraphs 1 through 11 above and incorporates them herein by
12 reference.

13
14 13. Plaintiff is bringing this action pursuant to the provisions of the Telephone
15 Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – “TCPA”).

16
17 14. Subdivision (b) (1) (A) (iii) of Section 227 of Title 47 of the United States
18 Code makes it unlawful for any person to “Make any call (other than a call made for emergency
19 purposes or made with the prior express consent of the called party) using any automatic
20 telephone dialing system or an artificial or prerecorded voice...to any telephone number assigned
21 to a paging service, specialized mobile radio service, or other radio common carrier service, or
22 any service for which the called party is charged for the call.”

23
24 15. Defendants have been calling Plaintiff’s number assigned to a paging service,
25 using an automatic telephone dialing system or an artificial or prerecorded voice, without
26 Plaintiff’s express permission, on at least 7 occasions during the statutory period of the last 4
27 years, pursuant to 28 U.S.C. § 1658. These calls are only the calls known to Plaintiff at this time
28 and Plaintiff states on information and belief, without yet having the aid of full discovery, that it

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1 is quite likely that Defendants have made many more violative calls to Plaintiff's number
2 assigned to a paging service. These calls were not made for any emergency purpose, nor were
3 these calls exempt under subdivision (c) of section 64.1200 of title 47 of the Code of Federal
4 Regulations.

6 16. Subdivision (b)(3) of section 227 of title 47 of the United States Code permits a
7 private right of action in state court for violations of 47 U.S.C. §227 (b) (1) (A) (iii). Plaintiff
8 may obtain relief in the form of injunctive relief, or Plaintiff may recover \$500.00 for each
9 violation, or both. If the court finds that defendants' violations were willful or knowing, it may,
10 in its discretion, award up to three times that amount.

SECOND CAUSE OF ACTION

[Violation(s) of California Civil Code § 1770 (a) (22) (A)]

17. Plaintiff realleges paragraphs 1 through 16 above and incorporates them herein by reference.

18. California Civil Code § 1770 (a) (22) (A) requires that all recorded messages disseminated within the state be introduced by a live, natural voice giving the name of the entity calling, the name of the entity being represented, an address or phone number for that entity, and asking permission to play the recording. Defendants' illegal prerecorded telemarketing calls to Plaintiff failed to comply with this requirement.

19. As a proximate result of defendants' violations of Civil Code section 1770, plaintiff has suffered and continues to suffer damages in an amount not yet ascertained, to be proven at trial.

20. Civil Code section 1780 (a) (2) provides for an injunction against future conduct in violation of Civil Code section 1770.

Case 3:07-cv-02226-DMS-AJB Document 26 Filed 01/30/08 Page 6 of 8

1 21. Civil Code section 1780 (a) (4) provides for an award of punitive damages for
2 violations of Civil Code section 1770.

4 22. Civil Code section 1780 (d) provides for an award of attorneys fees for plaintiffs
5 harmed by California Civil Code §1770 (a) (22) (A) violations.

THIRD CAUSE OF ACTION

[Trespass to Chattel]

9 23. Plaintiff realleges paragraphs 1 through 22 above and incorporates them herein by
10 reference.

12 24. The conduct by defendants complained of herein, namely calling Plaintiff's
13 number assigned to a paging service, using an artificial or prerecorded voice, without Plaintiff's
14 express permission, constitutes an electronic trespass to chattel.

¹⁶ 25. At no time did Plaintiff consent to this trespass.

18 26. As a proximate result of these intrusions, Plaintiff suffered damage in an amount
19 according to proof.

21 27. In making the illegal calls described above, defendants were guilty of oppression
22 and malice, in that defendants made said calls with the intent to vex, injure, or annoy Plaintiff or
23 with a willful and conscious disregard of Plaintiff's rights. Plaintiff therefore seeks an award of
24 punitive damages.

25 / / /
26 / / /
27 / / /

Case 3:07-cv-02226-DMS-AJB Document 26 Filed 01/30/2008 Page 7 of 8

FOURTH CAUSE OF ACTION
[Engaging in Unfair Business Practices]

28. Plaintiff realleges paragraphs 1 through 27 above and incorporates them herein by reference.

29. Because Defendants' unlawful prerecorded telemarketing calls violated federal and California statutes, they are unlawful business practices within the meaning of section 17200 of the Business and Professions Code.

30. Section 17203 of the Business and Professions Code entitles Plaintiff to an injunction enjoining defendants from engaging in unfair or unlawful business practices.

WHEREFORE Plaintiff prays for judgment against defendants, and each of them, as follows:

On the FIRST CAUSE OF ACTION;

1. For an award of \$500.00 for each violation of 47 U.S.C. §227;
 2. For an award of \$1,500.00 for each such violation found to have been willful;

On the SECOND CAUSE OF ACTION:

3. For compensatory damages according to proof;
 4. For preliminary and permanent injunctions, enjoining Defendants, and each of them, from engaging in activity in violation of California Civil Code §1770 (a) (22) (A);
 5. For punitive damages;
 6. For attorneys fees;

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I | On the THIRD CAUSE OF ACTION:

7. For compensatory damages according to proof;
 8. For punitive damages;

5 On the FOURTH CAUSE OF ACTION:

9. For preliminary and permanent injunctions, enjoining Defendants, and each of them, from engaging in unfair or unlawful business practices pursuant to section 17203 of the Business and Professions Code;

0 | On ALL CAUSES OF ACTION:

10. For attorney's fees pursuant to California Code of Civil Procedure § 1021.5.
 11. For costs of suit herein incurred; and
 12. For such further relief as the Court deems proper.

5 | DATED: January 30, 2008

/s/ Chad Austin
Chad Austin, Attorney for
Plaintiff, JAMES M. KINDER
Email: chadaustin@cox.net

EXHIBIT 3

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1 Chad Austin, Esq. SBN 235457
2 4632 Berwick Drive
3 San Diego, CA 92117
4 Telephone: (619) 992-7100
5 Facsimile: (619) 295-1401
6 Attorney for Plaintiff, JAMES M. KINDER, an individual

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

11 JAMES M. KINDER,)
12 Plaintiff,)
13 v.)
14 HARRAH'S ENTERTAINMENT, Inc.;)
15 HARRAH'S OPERATING COMPANY,)
16 Inc.; HARRAH'S MARKETING)
17 SERVICES CORPORATION; HARRAH'S)
18 LICENSE COMPANY, LLC; HARRAH'S)
19 LAUGHLIN, Inc.; HBR REALTY)
20 COMPANY, Inc. and DOES 1 through 100,)
inclusive,)
Defendants.)
Case No. 07 CV 2132 DMS (AJB)
[Consolidated with 07CV2226 DMS (AJB)]
Judge: Hon. Dana M. Sabraw
Mag. Judge: Hon. Anthony J. Battaglia
**DECLARATION OF CHAD AUSTIN IN
SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**
Date: April 25, 2008
Time: 1:30 p.m.
Courtroom: 10

21 I, CHAD AUSTIN, declare as follows:

22 1. I am an attorney at law duly licensed and admitted to practice before all courts of
23 the State of California, the United States District Court, Southern District of California and the
24 Ninth Circuit Court of Appeals and have been attorney of record for Plaintiff in this matter since
25 its inception. If called as a witness, I could and would competently testify to all facts within my

Case 3:07-cv-02132-DMS-AJB Document 53-2 Filed 04/11/2008 Page 2 of 6

1 personal knowledge except where stated on information and belief.

2

3 2. I am fully familiar with all of the facts and circumstances surrounding this
4 case. This declaration is submitted in support of Plaintiff's Opposition to Defendants' Motion to
5 Dismiss. The matters stated in this declaration are true, of my own personal knowledge.
6

7

8 3. Plaintiff has in his possession and I have personally listened to the tape recordings
9 of each and every call (7 in total) made by Defendants to Plaintiff's number assigned to a paging
10 service 619-999-9999, a San Diego, California wireless telephone number.
11

12

13 4. One (1) of the unlawful prerecorded telemarketing calls complained of in this
14 action, which was made on October 26, 2006 at 7:24 p.m., included what clearly appeared to be a
15 man's prerecorded voice. The prerecorded voice message promoted the Harrah's Las Vegas
16 Casino. A true and correct verbatim transcript of that prerecorded message is attached hereto as
17 Exhibit B.
18

19

20 5. On January 17, 2008, I accessed the FASTweb website, which publishes real
21 estate ownership information relating to properties around the United States. After doing a
22 "Property Profile" of 3475 Las Vegas Boulevard South, Las Vegas, Nevada, I found the
23 document a true and correct copy of which is attached hereto as Exhibit C. That document
24 names the owner of the property at said address, which is the address for the Harrah's Las Vegas
25 Casino in Las Vegas, Nevada, as "Harrah's Club." Also attached hereto and incorporated herein
26
27

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Case 3:07-cv-02132-DMS-AJB Document 53-2 Filed 04/11/2008 Page 3 of 6

1 by reference is Exhibit D, a true and correct copy of the website for Harrah's Las Vegas Casino,
2 which lists its address as 3475 Las Vegas Boulevard South, Las Vegas, Nevada.

3

4 6. On December 11, 2007, I accessed the website for the Nevada Secretary of State
5 and ran a search for "Harrah's Club." That search found the document a true and correct copy of
6 which is attached hereto as Exhibit E which states that Harrah's Club is no longer a valid entity
7 in the State of Nevada and that it merged into Harrah's Operating Company, Inc. effective
8 August 31, 1995.

9

10

11

12 7. On January 17, 2008, I accessed the Business Portal part of the California
13 Secretary of State's website and ran a California Business Search for Harrah's Operating
14 Company, Inc. and found the document a true and correct copy of which is attached hereto as
15 Exhibit F. That document states that the "agent for service of process" for Harrah's Operating
16 Company, Inc. is "CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN
17 CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE." The address for that
18 agent was listed as "PO BOX 526036 SACRAMENTO, CA 95852."

19

20

21

22 8. On January 17, 2008, I accessed the Business Portal part of the California
23 Secretary of State's website and ran a California Business Search for Harrah's Marketing
24 Services Corporation and found the document a true and correct copy of which is attached hereto
25 as Exhibit G. That document states that the "agent for service of process" for Harrah's
26 Marketing Services Corporation is "CORPORATION SERVICE COMPANY WHICH WILL

27

28

Case 3:07-cv-02132-DMS-AJB Document 53-2 Filed 04/11/2008 Page 4 of 6

1 DO BUSINESS IN CALIFORNIA AS CSC – LAWYERS INCORPORATING SERVICE.” The
2 address for that agent was listed as “PO BOX 526036 SACRAMENTO, CA 95852.”
3

4 9. One (1) of the unlawful prerecorded telemarketing calls complained of in this
5 action, which was made on December 9, 2003 at 10:19 a.m., was what clearly appeared to be a
6 prerecorded telemarketing call. The prerecorded message stated that it was made on behalf of
7 “Harrah’s Rincon Casino,” located in Valley Center, San Diego County, California. My
8 investigation has revealed that the Harrah’s Rincon Casino is owned by the Rincon band of
9 Mission Indians and operated by one or more of several Harrah’s entities, including but not
10 necessarily limited to defendant HARRAH’S ENTERTAINMENT, Inc. (a Delaware
11 corporation), HARRAH’S OPERATING COMPANY, Inc. (a Delaware corporation),
12 HARRAH’S MARKETING SERVICES CORPORATION (a Nevada corporation) and
13 HARRAH’S LICENSE COMPANY, LLC (a Nevada limited liability company). However,
14 discovery will ultimately be required in order to determine exactly which Harrah’s entity operates
15 the Harrah’s Rincon Casino. A true and correct verbatim transcript of the December 9, 2003 at
16 10:19 a.m. call is attached hereto as Exhibit H.
17
18

19 10. It is absolutely untrue that Plaintiff filed a “Declaration of James M. Kinder in
20 Support of Filing By Vexatious Litigant in” in *James M. Kinder v. Sprint PCS Assets, LLC, et*
21 *al.*, United States District Court, Southern District of California, Case No. 07CV2049 WQH
22 JMA. No such declaration was filed in that case.
23
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Case 3:07-cv-02132-DMS-AJB Document 53-2 Filed 04/11/2008 Page 5 of 6

1 11. It is true that, in some previous TCPA matters, I filed Declarations by my client to
2 support the initial complaint filed therewith. That is because the clerk's office at the San Diego
3 Superior Court ("civil business office") erroneously required same before they would accept a
4 new filing. After jumping through the unnecessary hoop several times, as in *James M. Kinder v.*
5 *Allied Interstate*, San Diego Superior Court Case No. GIC 850543 (suing for violations of the
6 Telephone Consumer Protection Act), which filing was approved by then Presiding Judge Janis
7 Sammartino on February 26, 2007, the civil business office no longer required my client to
8 submit a declaration to be approved by the Presiding Judge. At some point on a date I cannot
9 recall, a clerk with the court stated that the court's in-house legal department had advised them
10 that as long as my client filed through counsel, no approval from the Presiding Judge was
11 necessary. Since then, no such approval has been required by the court in any new filing by Mr.
12 Kinder while he was represented by counsel.

15
16 12. The fact that no court approval should have ever been required when my client
17 filed through counsel was ratified by then Presiding Judge Sammartino on June 28, 2007. In
18 *James M. Kinder v. Adecco, Inc.*, San Diego Superior Court Case No. GIC882000, Adecco filed
19 a Notice of Vexatious Litigant, relying on *In re Shieh*, (1993) 17 Cal.App.4th 1154, affecting an
20 automatic stay of that litigation. I timely filed an opposition and Judge Sammartino lifted the
21 stay, holding that the pre-filing order did not apply because Mr. Kinder had filed that action
22 through counsel and not *In Propria Persona*. A true and correct copy of Judge Sammartino's
23 Order is attached hereto as Exhibit A.

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Case 3:07-cv-02132-DMS-AJB Document 53-2 Filed 04/11/2008 Page 6 of 6

1 I declare under penalty of perjury under the laws of the State of California and the laws of
2 the United States that the foregoing is true and correct and that this declaration was executed by
3 me on April 11, 2008 in San Diego, California.

4 DATED: April 11, 2008
5

6 By: /s/ Chad Austin
7 CHAD AUSTIN, Esq., Attorney for
8 Plaintiff, JAMES M. KINDER
9 Email: chadaustin@cox.net
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Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 1 of 17

EXHIBIT A

Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 2 of 17

1
2 FILED
3 Clerk of the Superior Court
4 JUN 28 2007
5 By: A. Gerba, Deputy
6
7

8 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN DIEGO

10 JAMES M. KINDER,) CASE NO. GIC882000
11 Plaintiff,)
12 v.) ORDER LIFTING AUTOMATIC STAY
13 ADECCO, INC. and DOES 1 through 100,) AND DENYING DEFENDANT'S
inclusive,) REQUEST FOR DISMISSAL AND OR
14 Defendants.) REQUIREMENT OF A SECURITY (CCP §
15) 391, et seq.)
16 _____)

17 AFTER REVIEWING THE NOTICE OF VEXATIOUS LITIGANT AND REQUEST FOR
18 DISMISSAL AND/OR SECURITY, AS WELL AS THE OPPOSITION THERETO, THE
COURT HEREBY RULES:

19 James Kinder is subject to a pre-filing order pursuant to Code of Civil Procedure section
20 391, et seq. The order prohibits Mr. Kinder from filing litigation in pro per without approval of
21 the presiding judge of the court where the litigation is to be filed. Here, Mr. Kinder is a plaintiff
22 in an action filed by an attorney, Chad Austin. On June 8, 2007, defendant filed a Notice of
23 Vexatious Litigant pursuant to Code of Civil Procedure section 391.7, subdivision (c). This
24 created an automatic stay. Plaintiff filed an opposition to the Notice of Vexatious Litigant on
25 June 25, 2007, which is within the statutory period to respond. (CCP § 391.7(c).)

26 Code of Civil Procedure section 391.7, subdivision (a) states that the court may, "enter a
27 prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of
28 this state in propria persona without first obtaining leave of the presiding judge of the court

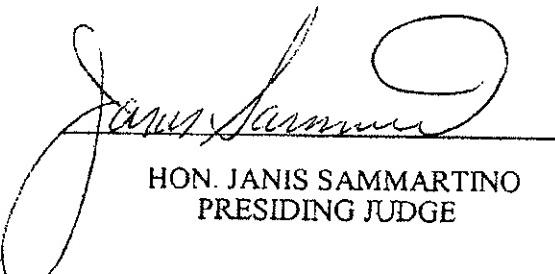
Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 3 of 17

1 where the litigation is proposed to be filed." The statute does not, on its face, preclude a litigant
2 subject to a pre-filing order from filing a lawsuit while represented by counsel, as in this case.
3 Further, there is nothing to suggest that the pre-filing order against Mr. Kinder includes a
4 prohibition against counsel filing suit on his behalf. Thus, there is not a violation of the pre-
5 filing order.

6 The Court hereby lifts the automatic stay and requires defendant to plead within 10 days
7 following service of this order.

8 IT IS SO ORDERED.

9
10 DATED: JUN 28 2008

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12 
13 HON. JANIS SAMMARTINO
14 PRESIDING JUDGE
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Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 4 of 17

EXHIBIT B

Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 5 of 17

EXHIBIT B

Kinder v. Harrah's Entertainment

07 CV 2132 DMS (AJB)
Consolidated with 07 CV 2226 DMS (AJB)

October 26, 2006 at 7:24 p.m.

"Calling to tell you about...some big events at Harrah's Las Vegas. I'm pleased to announce that I'll be bringing my holiday show to Harrah's this November 22nd through all of December. So go online or call for your reservations today at 702-369-5222. That's 702-369-5222. Secondly, the great gift wrap up is coming to Harrah's Las Vegas November 13th through the 19th. Now don't miss this chance to do your holiday shopping using the points you've earned this year. You've got to use 'em or you lose em'. So don't miss out on this. Call 1-866-972-7871 to make your reservations today. Come visit us for these great events and get ready for the holidays. Have a good one. Based upon availability."

Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 6 of 17

EXHIBIT C

FAST Web

Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 7 of 17 Page 1 of 1

3475 Las Vegas Blvd S
Las Vegas NV 89109

Property Profile

Property Information

Owner(s)	Harrahs Club	Parcel #	162-16-301-008
Property	3475 Las Vegas Blvd S Las Vegas, NV 89109	Map Coord	162-016; 924-B1
Mailing Addr	1023 Cherry Rd Memphis , TN 38117	Census Tract	0023.00
		County	Clark
		Owner Phone	
Legal	PARCEL MAP FILE 56 PAGE 72 LOT 1 & PARCEL MAP 57-51 LOT 1 & PT W2 SW4 SEC 16 21 61 PT N2 SW4 SEC 16 TWP 21 RGN 61.		
Lot Number	1	Tract Number	
Block		Subdivision	

Characteristics

Use	Hotel	Year Built	1990	Sq. Feet	4030569
Zoning		Lot Size	17.73 / 772318.8	# of units	9999
Bedrooms		Bathrooms		Fireplace	
#Rooms		Quality		Heating	
Pool/Spa	N	Air	N	Style	
Stories	1	Improvements		Parking	
Flood	X				
Attributes					
Other					
Property Sale Information					
Sale Date		\$/Sq. Ft.		2nd Mtg.	
Sale Price		1st Loan		Prior Sale Amt.	
Doc No.		Loan Type		Prior Sale Dt.	
Doc Type		Xfer Date		Prior Doc No.	
Seller		Lender		Prior Doc Type	

Tax Information

Imp Value	\$75,594,602.00	Exemption	
Land Value	\$59,901,062.00	Tax Year/Area	2007/470
Total Value	\$135,495,664.00	Tax Value	\$135,495,664.00
Tax Amount	\$4,128,791.03	Improved	TI_improved

Information compiled from various sources and is deemed reliable but not guaranteed.

Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 8 of 17

EXHIBIT D

Las Vegas Hotel Reservations at Harrah's Las Vegas Hotel & Casino Case 3:07-cv-02132-DMS-AJB Document 59-3 Filed 04/11/2008 Page 9 of 17 Page 1 of 1

HARRAH.COM

DISNEYLAND

BY HARRAH'S

CASINO HOTELS

DATA

RESORTS

ENTERTAINMENT

WEDDINGS

ACADEMY AWARDS

REPLAY

BET ON

Comedian of the Year

Rita Rudner - Purchase Tickets

Check-In Date

Check-Out Date

#Adults #Children

[View/Cancel Reservation](#)




[CLICK HERE TO JOIN THE PARADE!](#)



EXCLUSIVE EMAIL OFFERS
[SIGN UP NOW!](#)

[HOT DEALS AT HARRAH'S LAS VEGAS](#)
 Heart-pounding excitement from \$45/NI
[LEARN MORE!](#)



RITA RUDNER
 "Best Comedian in Las Vegas" by The Las Vegas Review-Journal for five straight years!
[LEARN MORE!](#)



CARNAVAL COURT NEW YEAR'S EVE
 The only outdoor New Years Eve Party on the Strip!
[LEARN MORE!](#)



THE MAC KING COMEDY MAGIC SHOW
 "Best Afternoon Show in Las Vegas" as mentioned in Where magazine.
[LEARN MORE!](#)



THE IMPROV
 World-Famous Comedy! Celebrating 25 years of laughter in Vegas! three new comedians each week.
[LEARN MORE!](#)

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3475 Las Vegas Blvd South, Las Vegas, NV 89108 1-800-214-9110

Marah's welcome message on behalf of the 4500 people at a recent local event.

Keep Votes to Stop Brexit Law Safe: https://www.change.org/petitions/keep-votes-to-stop-brexit-law-safe

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The use of this website is governed by Nevada Rule of Civil Procedure 16(b)(2).

Digitized by srujanika@gmail.com

Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 10 of 17

EXHIBIT E

Entity Actions - Secretary of State Nevada
 Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 11 of 17 Page 1 of 4

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Entity Actions for "HARRAH'S CLUB"

Sort by descending ascending order

1 - 19 of 19 actions

Actions\Amendments

Action Type:	Merge Out		
Document Number:	C1429-1971-018	# of Pages:	1
File Date:	08/31/1995	Effective Date:	

ARTICLES OF MERGER FILED MERGING THIS CORPORATION INTO HARRAH'S OPERATING

COMPANY, INC., A (DE) CORPORATION NOT QUALIFIED IN NEVADA. EFFECTIVE DATE:

8/31/95, 6:00 P.M. EASTERN DAYLIGHT TIME. FORWARDING ADDRESS: THE CORPORATION

TRUST CO. OF NEVADA, ONE E FIRST ST, RENO NV 89501. (5)PGS. DMF

Action Type:	Resident Agent Change		
Document Number:	C1429-1971-019	# of Pages:	1
File Date:	08/31/1995	Effective Date:	

CORPORATION TRUST COMPANY OF NEVADA

6100 NEIL ROAD #500 RENO NV 89511 DMF

Action Type:	Annual List		
Document Number:	C1429-1971-002	# of Pages:	1
File Date:	07/05/1995	Effective Date:	

List of Officers for 1995 to 1996

Action Type:	Merger		
Document Number:	C1429-1971-017	# of Pages:	1
File Date:	06/29/1995	Effective Date:	

Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 12 of 17

EXHIBIT F

California Business Search

Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 13 of 17 Page 1 of 1

California Business Portal

Secretary of State DEBRA BOWEN

DISCLAIMER: The information displayed here is current as of JAN 11, 2008 and is updated weekly. It is not a complete or certified record of the Corporation.

Corporation		
HARRAH'S OPERATING COMPANY, INC.		
Number: C1242088	Date Filed: 3/19/1984	Status: active
Jurisdiction: DELAWARE		
Address		
ONE CAESARS PALACE DR LAS VEGAS, NV 89109		
Agent for Service of Process		
CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE		
PO BOX 526036		
SACRAMENTO, CA 95852		

Blank fields indicate the information is not contained in the computer file.

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 14 of 17

EXHIBIT G

California Business Portal

Secretary of State DEBRA BOWEN

DISCLAIMER: The information displayed here is current as of JAN 11, 2008 and is updated weekly. It is not a complete or certified record of the Corporation.

Corporation		
HARRAH'S MARKETING SERVICES CORPORATION		
Number: C2105438	Date Filed: 4/14/1998	Status: active
Jurisdiction: NEVADA		
Address		
ONE CAESARS PALACE DR		
LAS VEGAS, NV 89109		
Agent for Service of Process		
CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE		
PO BOX 526036		
SACRAMENTO, CA 95852		

Blank fields indicate the information is not contained in the computer file.

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

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EXHIBIT H

Case 3:07-cv-02132-DMS-AJB Document 53-3 Filed 04/11/2008 Page 17 of 17

EXHIBIT H

Kinder v. Harrah's Entertainment

07 CV 2132 DMS (AJB)
Consolidated with 07 CV 2226 DMS (AJB)

December 9, 2003 at 10:19 a.m.

"...Harrah's Rincon with an exclusive VIP offer. You and a guest are invited to a special presentation of Showgirls this Wednesday night, December 10th, at 7:00 p.m. This sensational production is an exclusive in Southern California direct from the Rio in Vegas. Then enjoy a night in our fabulous hotel with a twenty dollar dining credit. To reserve this great package simply call 1-866 oh yeah oh. That's 866 649 3240 and ask for offer code RCA holiday. To be able to repeat this message just by pressing 2 on your touch tone phone. Hope to see you tomorrow night for Showgirls at Harrah's Rincon."

EXHIBIT 4

Case 3:07-cv-02132-DMS-AJB Document 51-2 Filed 04/11/2008 Page 1 of 6

1 Chad Austin, Esq. SBN 235457
2 4632 Berwick Drive
3 San Diego, CA 92117
4 Telephone: (619) 992-7100
5 Facsimile: (619) 295-1401
6 Attorney for Plaintiff, JAMES M. KINDER, an individual

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

11 JAMES M. KINDER,)
12 Plaintiff,)
13 v.)
14 HARRAH'S ENTERTAINMENT, Inc.;)
15 HARRAH'S OPERATING COMPANY, Inc.; HARRAH'S MARKETING)
16 SERVICES CORPORATION; HARRAH'S LICENSE COMPANY, LLC; HARRAH'S)
17 LAUGHLIN, Inc.; HBR REALTY)
18 COMPANY, Inc. and DOES 1 through 100, inclusive,)
19 Defendants.)
Case No. 07 CV 2132 DMS (AJB)
[Consolidated with 07CV2226 DMS (AJB)]
Judge: Hon. Dana M. Sabraw
Mag. Judge: Hon. Anthony J. Battaglia
DECLARATION OF CHAD AUSTIN IN SUPPORT OF PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
Date: April 25, 2008
Time: 1:30 p.m.
Courtroom: 10

31 I, CHAD AUSTIN, declare as follows:

22 1. I am an attorney at law duly licensed and admitted to practice before all courts of
23 the State of California, the United States District Court, Southern District of California and the
24 Ninth Circuit Court of Appeals and have been attorney of record for Plaintiff in this matter since
25 its inception. If called as a witness, I could and would competently testify to all facts within my

Case 3:07-cv-02132-DMS-AJB Document 51-2 Filed 04/11/2008 Page 2 of 6

1 personal knowledge except where stated on information and belief.

2

3 2. I am fully familiar with all of the facts and circumstances surrounding this
4 case. This declaration is submitted in support of Plaintiff's Opposition to Defendants
5 HARRAH'S LICENSE COMPANY, LLC, HARRAH'S LAUGHLIN, Inc. and HBR REALTY
6 COMPANY, Inc.'s Motion to Dismiss. The matters stated in this declaration are true, of my own
7 personal knowledge.

8

9

10 3. Plaintiff has in his possession and I have personally listened to the tape recordings
11 of each and every call (7 in total) made by Defendants to Plaintiff's number assigned to a paging
12 service 619-999-9999, a San Diego, California wireless telephone number.

13

14

15 4. Two (2) of the unlawful prerecorded telemarketing calls complained of in this
16 action, which were made on May 25, 2005 at 2:23 p.m. and November 28, 2005 at 9:43 a.m.,
17 included what clearly appeared to be prerecorded voices. The prerecorded voice messages
18 promoted the Harrah's Laughlin Casino. A true and correct verbatim transcript of those
19 prerecorded messages is attached hereto as Exhibit B.

20

21

22 5. On December 11, 2007, I accessed the FASTweb website, which publishes real
23 estate ownership information relating to properties around the United States. After doing a
24 "Property Profile" of 2900 South Casino Drive, Laughlin, Nevada, I found the document a true
25 and correct copy of which is attached hereto as Exhibit C. That document names the owner of
26

27

28

Case 3:07-cv-02132-DMS-AJB Document 51-2 Filed 04/11/2008 Page 3 of 6

1 the property at said address, which is the address for the Harrah's Laughlin Casino in Laughlin,
2 Nevada, as "Harrah's Laughlin, Inc." Also attached hereto and incorporated herein by reference
3 is Exhibit D, a true and correct copy of the website for Harrah's Laughlin Casino, which lists its
4 address as 2900 South Casino Drive, Laughlin, Nevada 89029.
5
6

7 6. One (1) of the unlawful prerecorded telemarketing calls complained of in this
8 action, which was made on December 9, 2003 at 10:19 a.m., was what clearly appeared to be a
9 prerecorded telemarketing call. The prerecorded message stated that it was made on behalf of
10 "Harrah's Rincon Casino," located in Valley Center, San Diego County, California. My
11 investigation has revealed that the Harrah's Rincon Casino is owned by the Rincon band of
12 Mission Indians and operated by one or more of several Harrah's entities, including but not
13 necessarily limited to defendant HARRAH'S ENTERTAINMENT, Inc. (a Delaware
14 corporation), HARRAH'S OPERATING COMPANY, Inc. (a Delaware corporation),
15 HARRAH'S MARKETING SERVICES CORPORATION (a Nevada corporation) and
16 HARRAH'S LICENSE COMPANY, L.L.C (a Nevada limited liability company). However,
17 discovery will ultimately be required in order to determine exactly which Harrah's entity operates
18 the Harrah's Rincon Casino. A true and correct verbatim transcript of the December 9, 2003 at
19 10:19 a.m. call is attached hereto as Exhibit E.
20
21

22
23 7. One (1) of the unlawful prerecorded telemarketing calls complained of in this
24 action, which was made on October 26, 2006 at 2:29 p.m., included what clearly appeared to be a
25 man's prerecorded voice. The prerecorded voice message promoted the Harrah's Council Bluffs
26

Case 3:07-cv-02132-DMS-AJB Document 51-2 Filed 04/11/2008 Page 4 of 6

1 Casino. A true and correct verbatim transcript of that prerecorded message is attached hereto as
2 Exhibit F.

3

4 8. On December 17, 2007, I accessed the FASTweb website, which publishes real
5 estate ownership information relating to properties around the United States. After doing a
6 "Property Profile" of 2701 23rd Avenue, Council Bluffs, Iowa, I found the document a true and
7 correct copy of which is attached hereto as Exhibit G. That document lists the owner of the
8 property at said address, which is the address for the Harrah's Council Bluffs Casino in Council
9 Bluffs, Iowa, as "Hbr Realty Co Inc." Also attached hereto and incorporated herein by reference
10 is Exhibit H, a true and correct printout of the website for Harrah's Council Bluffs Casino dated
11 December 17, 2008, which lists its address as 2701 23rd Avenue, Council Bluffs, Iowa.
12

13

14
15 9. I visited each of the websites for the Harrah's Casinos at issue in this case
16 (Harrah's Laughlin Casino, Harrah's Las Vegas Casino, Harrah's Rincon Casino, Harrah's
17 Metropolis Casino and Harrah's Council Bluffs Casino). Each of those websites lists at the
18 bottom of the page "© 2007 Harrah's License Company, LLC. All rights reserved." Therefore, I
19 am informed and believe that Harrah's License Company, LLC is or may be a necessary party to
20 this action
21

22

23

24 10. It is absolutely untrue that Plaintiff filed a "Declaration of James M. Kinder in
25 Support of Filing By Vexatious Litigant in" in *James M. Kinder v. Sprint PCS Assets, LLC, et*
26 *al.*, United States District Court, Southern District of California, Case No. 07CV2049 WQH

27

28

Case 3:07-cv-02132-DMS-AJB Document 51-2 Filed 04/11/2008 Page 5 of 6

1 JMA. No such declaration was filed in that case.

2

3 11. It is true that, in some previous TCPA matters, I filed Declarations by my client to
4 support the initial complaint filed therewith. That is because the clerk's office at the San Diego
5 Superior Court ("civil business office") erroneously required same before they would accept a
6 new filing. After jumping through the unnecessary hoop several times, as in *James M. Kinder v.*
7 *Allied Interstate*, San Diego Superior Court Case No. GIC 850543 [suing for violations of the
8 Telephone Consumer Protection Act], which filing was approved by then Presiding Judge Janis
9 Sammartino on February 26, 2007, the civil business office no longer required my client to
10 submit a declaration to be approved by the Presiding Judge. At some point on a date I cannot
11 recall, a clerk with the court stated that the court's in-house legal department had advised them
12 that as long as my client filed through counsel, no approval from the Presiding Judge was
13 necessary. Since then, no such approval has been required by the court in any new filing by Mr.
14 Kinder while he was represented by counsel.

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16

17 12. The fact that no court approval should have ever been required when my client
18 filed through counsel was ratified by then Presiding Judge Sammartino on June 28, 2007. In
19 *James M. Kinder v. Adecco, Inc.*, San Diego Superior Court Case No. GIC882000, Adecco filed
20 a Notice of Vexatious Litigant, relying on *In re Shieh*, (1993) 17 Cal.App.4th 1154, affecting an
21 automatic stay of that litigation. I timely filed an opposition and Judge Sammartino lifted the
22 stay, holding that the pre-filing order did not apply because Mr. Kinder had filed that action
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1 through counsel and not *In Propria Persona*. A true and correct copy of Judge Sammartino's
2 Order is attached hereto as Exhibit A.

3

4 I declare under penalty of perjury under the laws of the State of California and the laws of
5 the United States that the foregoing is true and correct and that this declaration was executed by
6 me on April 11, 2008 in San Diego, California.
7

8 DATED: April 11, 2008

9

By: /s/ Chad Austin

10 CHAD AUSTIN, Esq., Attorney for
11 Plaintiff, JAMES M. KINDER
Email: chadaustin@cox.net

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EXHIBIT A

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F I L E D
Clerk of the Superior Court
JUN 28 2007

E
By: A. Gerba, Deputy

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

JAMES M. KINDER,) CASE NO. GIC882000
Plaintiff,)
ADECCO, INC. and DOES 1 through 100,) ORDER LIFTING AUTOMATIC STAY
inclusive,) AND DENYING DEFENDANT'S
Defendants.) REQUEST FOR DISMISSAL AND OR
) REQUIREMENT OF A SECURITY (CCP §
) 391, et seq.)

)

AFTER REVIEWING THE NOTICE OF VEXATIOUS LITIGANT AND REQUEST FOR
DISMISSAL AND/OR SECURITY, AS WELL AS THE OPPOSITION THERETO, THE
COURT HEREBY RULES:

James Kinder is subject to a pre-filing order pursuant to Code of Civil Procedure section 391, et seq. The order prohibits Mr. Kinder from filing litigation in pro per without approval of the presiding judge of the court where the litigation is to be filed. Here, Mr. Kinder is a plaintiff in an action filed by an attorney, Chad Austin. On June 8, 2007, defendant filed a Notice of Vexatious Litigant pursuant to Code of Civil Procedure section 391.7, subdivision (c). This created an automatic stay. Plaintiff filed an opposition to the Notice of Vexatious Litigant on June 25, 2007, which is within the statutory period to respond. (CCP § 391.7(c).)

Code of Civil Procedure section 391.7, subdivision (a) states that the court may, "enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court

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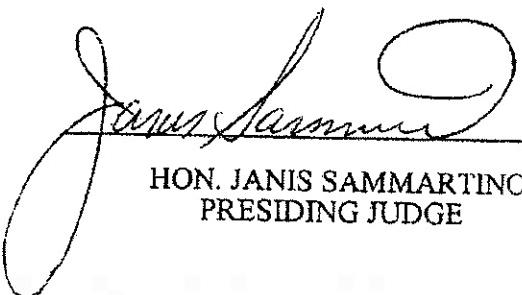
1 where the litigation is proposed to be filed." The statute does not, on its face, preclude a litigant
2 subject to a pre-filing order from filing a lawsuit while represented by counsel, as in this case.
3 Further, there is nothing to suggest that the pre-filing order against Mr. Kinder includes a
4 prohibition against counsel filing suit on his behalf. Thus, there is not a violation of the pre-
5 filing order.

6 The Court hereby lifts the automatic stay and requires defendant to plead within 10 days
7 following service of this order.

8 IT IS SO ORDERED.

9
10 DATED: JUN 28 2007

11
12 HON. JANIS SAMMARTINO
13 PRESIDING JUDGE
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EXHIBIT B

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EXHIBIT B

Kinder v. Harrah's Entertainment

07 CV 2132 DMS (AJB)
Consolidated with 07 CV 2226 DMS (AJB)

May 25, 2005 at 2:23 p.m.

"Hello this is Karen Gregory, the air program manager at Harrah's in Laughlin, Nevada. We still have a few seats available on the June 5th through 7th charter from San Diego to Laughlin. Because you are a valued Harrah's customer, we'd like to offer you a special package price of \$129. That's right, round trip airfare and hotel accommodations for 2 people for a total of only \$129. To take advantage, please call flight reservations at 1-800-315-9113 and ask for offer code SAN0605B. We hope you're able to join us on the June 5th charter to Laughlin."

November 28, 2005 at 9:43 a.m.

"...Bob Lea from Harrah's in Laughlin, Nevada. I'm calling to announce that we still have seats available on our flight departing from the San Diego international airport on Sunday December 4th and returning on Tuesday, December 6th. I want to make sure that you don't miss this opportunity for you and a friend to travel for 2 nights for the unbelievable low price of \$109 per person and that includes your airfare and hotel accommodations. To take advantage of this terrific offer, please call 1-800-315-9113 and ask for offer code SAN1204R. Call now. The offer is based on availability while seats last. One of our representatives will gladly make your reservation."

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EXHIBIT C

FASTWeb Case 3:07-cv-02132-DMS-AJB Document 51-3 Filed 04/11/2008 Page 7 of 17 Page 1 of 1

2900 S Casino Dr
Laughlin NV 89029

FASTWeb

Property Profile

Property Information

Owner(s)	Harrahs Laughlin Inc	Parcel #	264-24-302-001
Property	2900 S Casino Dr	Map Coord	264-024, 1472-D5
	Laughlin, NV 89029	Census Tract	0057.02
Mailing Addr	1023 Cherry Rd	County	Clark
	Memphis , TN 38117	Owner Phone	
Legal	PARCEL MAP FILE 48 PAGE 2 PT LOT 2 & PT LOT 3 PT S2 SEC 24 TWP 32 RGN 66.		
Lot Number	2	Tract Number	
Block		Subdivision	

Characteristics

Use	Hotel	Year Built	1987	Sq. Feet	1167374
Zoning		Lot Size	34.57 / 1505869.2	# of units	9999
Bedrooms		Bathrooms		Fireplace	
#Rooms		Quality		Heating	
Pool/Spa	N	Air	N	Style	
Stories	1	Improvements		Parking	
Flood	X				
Attributes					
Other					
Property Sale Information					
Sale Date		\$/Sq. Ft.		2nd Mtg.	
Sale Price		1st Loan		Prior Sale Amt.	
Doc No.	870819000341	Loan Type		Prior Sale Dt.	
Doc Type	Deed (reg)	Xfer Date	08/19/1987	Prior Doc No.	
Seller		Lender		Prior Doc Type	

Tax Information

Imp Value	\$32,675,226.00	Exemption	
Land Value	\$7,510,522.00	Tax Year/Area	2007/107
Total Value	\$40,185,748.00	Tax Value	\$40,185,748.00
Tax Amount	\$1,494,610.10	Improved	TI_improved

Information compiled from various sources and is deemed reliable but not guaranteed.

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EXHIBIT D

Nevada Hotel Reservations at Harrah's Laughlin Hotel & Casino
 Case 3:07-cv-02132-DMS-AJB Document 51-3 Filed 04/11/2008 Page 9 of 17 Page 1 of 1

HARRAH'S CASINO HOTEL & CASINO
 HARRAH'S LAUGHLIN HOTEL & CASINO
 HARRAH'S HOTEL & CASINO
 HARRAH'S HOTEL & CASINO
 HARRAH'S HOTEL & CASINO

Check-In Date: Dec 18 2007
Check-Out Date: Dec 19 2007
Adults: 1 **# Children:** 0

View/Cancel Reservation

CLICK HERE TO JOIN THE PARADE!

FLY AWAY & PLAY

HOME > TOP DESTINATIONS > HARRAH'S LAUGHLIN

STAY & PLAY PACKAGES

ROOM & SPA
 2 nights stay & \$50 Salon & Day Spa credit. From \$50/night plus tax
[LEARN MORE!](#)

SCORE OFFER 3 NIGHTS
 3 nights and 2 racing tickets for Saturday's Racing from \$70/night plus tax
[LEARN MORE!](#)

VIEW ALL PACKAGES FOR HARRAH'S LAUGHLIN

EVENTS/ENTERTAINMENT!

WINTERFEST 2008
 Don't miss the coolest event of the New Year!
 WinterBreak!
[LEARN MORE!](#)

STEVE LUCKY & THE RHUMBA BUMS
 The joint is jumpin' when Steve Lucky & the Rhumba Bums swing into the Showroom, Jan. 5-16, 2008.
[LEARN MORE!](#)

[+]

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Harrah's CAESARS HORSESHOE



REWARDS

POKER

If you're planning a vacation, Harrah's Laughlin can open the door to a world of Nevada entertainment and luxury hospitality. Located in the center of the premier gaming, hotel, and Casinos. For easy hotel reservations, Harrah's Laughlin offers convenient online booking. If you're seeking the best in dining, entertainment, and prime gambling, look no further than Harrah's Laughlin. Book your hotel reservation today and experience all that Harrah's Laughlin has to offer.

Harrah's welcomes those of legal age to gamble in a casino to our website.

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[Privacy](#) | [Security](#) | [Legal](#)

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EXHIBIT E

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EXHIBIT E

Kinder v. Harrah's Entertainment

07 CV 2132 DMS (AJB)
Consolidated with 07 CV 2226 DMS (AJB)

December 9, 2003 at 10:19 a.m.

"...Harrah's Rincon with an exclusive VIP offer. You and a guest are invited to a special presentation of Showgirls this Wednesday night, December 10th, at 7:00 p.m. This sensational production is an exclusive in Southern California direct from the Rio in Vegas. Then enjoy a night in our fabulous hotel with a twenty dollar dining credit. To reserve this great package simply call 1-866 oh yeah oh. That's 866 649 3240 and ask for offer code RCA holiday. To be able to repeat this message just by pressing 2 on your touch tone phone. Hope to see you tomorrow night for Showgirls at Harrah's Rincon."

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EXHIBIT F

Case 3:07-cv-02132-DMS-AJB Document 51-3 Filed 04/11/2008 Page 13 of 17

EXHIBIT F

Kinder v. Harrah's Entertainment

07 CV 2132 DMS (AJB)
Consolidated with 07 CV 2226 DMS (AJB)

October 26, 2006 at 2:29 p.m.

"...Bluffs Casino and hotel. It's a great offer, just for you. I'd like to invite you to be my guest for up to 3 complimentary nights this Sunday October 29th through Tuesday October 31st 2006. There's plenty of exciting entertainment now through Halloween so come into Harrah's Casino Council Bluffs to check it out. Rooms are limited, so if you'd like to make your hotel reservation, please press 9 on your telephone keypad now or call 1-800-Harrah's. That's 1-800-427-7247. Please tell the reservation agent you'd like to use offer COU0PLX. That code again is COU0PLX. If you'd like to repeat this message, please press 2. This message is not intended for persons who have been disassociated from Harrah's or Horseshoe Casinos. If you wish to have your phone number removed from your account, please either press 7 now or call 712-396-3934 and leave the phone number you wish to have removed. Stay and play at Harrah's Council Bluffs, the fun place to play."

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EXHIBIT G

FASTWeb Case 3:07-cv-02132-DMS-AJB Document 51-3 Filed 04/11/2008 Page 15 of 17 Page 1 of 1

2701 23rd Ave
Council Bluffs IA 51501

Property Profile

Property Information

Owner(s)	Hbr Realty Co Inc	Parcel #	000035.35000583001000
Property	2701 23rd Ave	Map Coord	
	Council Bluffs, IA 51501	Census Tract	0313.00
Mailing Addr	1023 Cherry Rd Memphis , TN 38117	County	Pottawattamie
		Owner Phone	
Legal	SECTION 3-74-44 PT W1/2 SE COMM 1554.04' S CENTER SEC 3 TH E279.66' N1222' W82.58' N290' E1117.97' S2435.39' W1317.73' N929.85' TO POB (PARCEL 2).		
Lot Number		Tract Number	
Block		Subdivision	

Characteristics

Use	Commercial Building	Year Built	Sq. Feet
Zoning		Lot Size	# of units
Bedrooms		Bathrooms	Fireplace
#Rooms		Quality	Heating
Pool/Spa	N	Air N	Style
Stories		Improvements	Parking
Flood			
Attributes			
Other			
Property Sale Information			
Sale Date		\$/Sq. Ft.	2nd Mtg.
Sale Price		1st Loan	Prior Sale Amt.
Doc No.		Loan Type	Prior Sale Dt.
Doc Type		Xfer Date	Prior Doc No.
Seller		Lender	Prior Doc Type

Tax Information

Imp Value	\$60,615.500.00	Exemption	
Land Value	\$2,134,500.00	Tax Year	2005
Total Value	\$62,750,000.00	Tax Value	\$62,750,000.00
Tax Amount	\$1,105,748.00	Improved	TI_improved

Information compiled from various sources and is deemed reliable but not guaranteed.

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EXHIBIT H

Marin's Council Bluffs: Council Bluffs Hotel and Casino. Book Your Council Bluffs Hotel Reservation. Case 3:07-cv-02132-DMS-AJB Document 51-3 Filed 04/11/2008 Page 17 of 17

Check-In Date
 Dec 18 2007

Check-Out Date
 Dec 19 2007

#Adults **#Children**

[View/Cancel Reservation](#)

**Click to Make A Reservation
Total Rewards • Email Sign-up**

360° Breathtaking menu.

VERTIGO

FRESH MARKET

TONY ORLANDO
 Two Tickets to Tony Orlando Concert & a One Night Hotel Stay at Harrah's Council Bluffs for just \$209
[LEARN MORE!](#)

BLUE OYSTER CULT
 Two Tickets to the Blue Oyster Cult Concert and a One Night Hotel Stay at Harrah's Council Bluffs for just \$209
[LEARN MORE!](#)

HOT GIFTS, COOL MILLION
 HOT GITS, Cool Million
[LEARN MORE!](#)

AFRODISIACS
 Afrodisiacs on New Year's Eve
[LEARN MORE!](#)

BLUE OYSTER CULT
 Blue Oyster Cult LIVE at Harrah's
[LEARN MORE!](#)

IDX MERRY MULTIPLIER
 Swipe Your Total Rewards Card to Multiply Your Credit!
[LEARN MORE!](#)

TONY ORLANDO
 Tony Orlando
[LEARN MORE!](#)

VERTIGO AT 360 ENTERTAINMENT
 Every Friday & Saturday!
[LEARN MORE!](#)

Harrah's CAESARS HORSESHOE

Address: 2701 23 Ave; Council Bluffs, IA 51502; **Phone:** (712) 329-6000
If you're planning a vacation, you'll want to make your arrangements to stay at one of the premier Council Bluffs accommodations - the new Council Bluffs Hotel. The Council Bluffs Hotel offers everything you could possibly want in a hotel room, including a swimming pool, sauna, Jacuzzi, and a complete fitness center.

Address: 2701 23 Ave, Coquitlam B.C. V3K 1M2 | Phone: (604) 270-2222 | Fax: (604) 270-6666

If you are interested in learning more about the premier *Cloudy with a Chance of Meatballs*, the book, visit www.cloudywithachanceofmeatballs.com.

Attributed to: [John Galt](#) | Last updated: [2023-01-01](#) | Version: [1.0](#)

[+]
FLEETBACK

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1 Chad Austin, Esq. SBN 235457
2 4632 Berwick Drive
3 San Diego, CA 92117
4 Telephone: (619) 992-7100
5 Facsimile: (619) 295-1401

6
7
8 Attorney for Plaintiff JAMES M. KINDER, an individual

9
10
11
12 UNITED STATES DISTRICT COURT
13 SOUTHERN DISTRICT OF CALIFORNIA

14 JAMES M. KINDER,) CASE NO. 07 CV 2132 DMS (AJB)
15 Plaintiff,) Consolidated with 07cv2226 DMS (AJB)
16 v.) PROOF OF SERVICE
17 HARRAH'S ENTERTAINMENT, Inc.;)
18 HARRAH'S OPERATING COMPANY, Inc.;)
19 HARRAH'S MARKETING SERVICES)
20 CORPORATION; HARRAH'S LICENSE)
21 COMPANY, LLC; HARRAH'S LAUGHLIN,)
22 Inc.; HBR REALTY COMPANY, Inc. and)
23 DOES 1 through 100, inclusive,)
24 Defendants.)

25 I, the undersigned, declare that:

26 I am over the age of 18 years and not a party to this case; I am employed in and am a
27 resident of the County of San Diego, State of California, where the within service occurred, and
28 my business address is 4632 Berwick Drive, San Diego, California 92117.

29 // /
30 // /
31 // /
32 // /

PROOF OF SERVICE

Case 3:07-cv-02132-DMS-AJB Document 51-4 Filed 04/11/2008 Page 2 of 2

1 I caused to be served on **April 11, 2008**, the following documents:

2 **OPPOSITION TO MOTION TO DISMISS; DECLARATION OF CHAD AUSTIN;**

3 **EXHIBITS**

4 on the interested parties in this action through their attorneys, as stated below, who have
 5 agreed to accept electronic service in this matter, by electronically filing and serving said
 6 documents via the Court's CM/ECF electronic filing server:

7 HARVEY M. MOORE
 8 BIDNA & KEYS, APLC
hmoore@bidnakcys.com

David J. Kaminski
 Carlson & Messer
kamisnkd@cmtlaw.com

9 Jonathan Andrews Boynton
 Kirby Noonan Lance and Hoge
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 Steinheimer, LLP
mellis@ecplslaw.com
asteinheimer@ecplslaw.com

17 By first class United States Mail to:

18 Ansis Viksnins
 Lindquist and Vennum
 4200 IDS Center
 80 South 8th Street
 Minneapolis, Minnesota 55402

21 I declare under penalty of perjury, under the laws of the State of California and the laws
 22 of the United States, that the foregoing is true and correct and that this declaration was executed
 23 on April 11, 2008 at San Diego, California.

24 By: /s/ Chad Austin
 25 CHAD AUSTIN, Esq.
 Attorney for Plaintiff, James M. Kinder
 26 Email: chadaustin@cox.net